



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
OFFICE OF RESEARCH AND DEVELOPMENT  
NATIONAL RISK MANAGEMENT RESEARCH LABORATORY  
CINCINNATI, OHIO 45268

February 1, 2017

**MEMORANDUM**

**SUBJECT:** Request for Ratification of an Unauthorized Commitment –  
Society of Environmental Toxicology and Chemistry (SETAC) Registration

**FROM:** Cynthia Sonich-Mullin, Director *C. Sonich-Mullin*  
National Risk Management Research Laboratory (NRMRL)  
Office of Research and Development (ORD)

**TO:** Lisa Stultz, Acting Director  
Cincinnati Procurement Operations Division (CPOD)  
Office of Administration and Resources Management (OARM)

- I. Nature, Necessity and Benefits Derived from the Work – Federal Acquisition Regulation (FAR) 1.602-3(c)(1) and EPA Acquisition Regulation (EPAAR) 1501.602-3:

On October 7, 2016, ORD traveler Xiaoyu Liu of NRMRL, Air Pollution Prevention & Control Division (APPCD), requested purchase card holder Mark Barnes (NRMRL/APPCD) to register her for the SETAC World Congress Conference in Orlando, Florida, taking place on November 6-10, 2016. No Purchase Requisition (PR) was in place at the time of registration on October 18, 2016, and resulted in an unauthorized commitment of \$920.00.

The Society of Environmental Toxicology and Chemistry (SETAC) is a not-for-profit, global professional organization comprised of some 6,000 individual members and institutions from academia, business and government. Since 1979, the Society has provided a forum where scientists, managers and other professionals exchange information and ideas on the study, analysis and solution of environmental problems, the management and regulation of natural resources, research and development, and environmental education. SETAC's founding principles are multidisciplinary approaches to solving environmental problems, tripartite balance among academia, business, and government, and science-based objectivity. A major aspect of SETAC's mission is to organize meetings that bring together interested parties to exchange information on an array of topics of interest to its members. Xiaoyu Liu of NRMRL/APPCD presented her research on testing protocols for evaluating exposure to chemicals (VOCs and SVOCs) from common products, as well as models for estimating exposure to chemicals used in consumer products and indoor environments at the 7<sup>th</sup> SETAC World Congress/SETAC North America 37<sup>th</sup> Annual Meeting in Orlando, Florida.

- II. Circumstances Surrounding This Unauthorized Procurement – EPAAR 1501.602-3(c)(1):

On October 7, 2016, Dr. Xiaoyu Liu indicated to Mr. Barnes that the travel had been approved and that she was not a member of SETAC. Dr. Liu provided Mr. Barnes with her Concur travel documents at this time. Mr. Barnes registered Dr. Liu for the conference on October 18, 2016. In these cases, a PR is generated to pay for the registration, or the accompanying training form

(SF182) is utilized as the document to support the obligation of funds. A training form was not completed for this conference because the costs were all to be paid from the APPCD travel allocation. Therefore, there was no training form generated for this conference because the traveler was not planning to cover any travel costs (e.g., per diem and hotel) using training funds. In completing this task Mr. Barnes relied on the travel documents that were provided to him. On the travel documents, under the accounting allocations section, there is a classification code which included the number 17C26CF000.4. Mr. Barnes incorrectly assumed that this was the PR for Dr. Liu's travel and registered Dr. Liu using this PR (1726CF0004). This PR number was actually a number used by Mr. Dennis Tabor (NRMRL/APPD) for supplies in his chemistry lab. Dr. Liu was inadvertently registered for the SETAC conference without an accompanying purchase requisition. Mr. Barnes duly acknowledges and regrets the unintentional error of not verifying that the PR number he used was the proper number.

### III. Authority to Ratify – FAR 1.602-3(c)(2):

The government obtained a benefit from the services provided by SETAC by providing a venue for Dr. Liu to share her research results and gather the latest information in her field to improve her research studies and inform future scientific directions. The services were also of a type that were lawful for EPA to procure, and the Purchase Card Holder had authority to use his card to pay the registration fee at the time the unauthorized commitment occurred had proper steps been taken.

### IV. Proper Contract – FAR 1.602-3 (c)(3):

The purchase was intended to be a simplified acquisition (purchase card). The registration to SETAC would have been proper had it been approved and funded by the Funds Certifying Officer.

### V. Price Reasonableness – FAR 1.602-3(c)(4):

Based on historical price comparison for similar conferences, the price of \$920.00 was determined to be fair and reasonable.

### VI. Availability of Funds – FAR 1.602-3(c)(6)

Fiscal year 17/18 funds were available at the time of the unauthorized commitments and remain committed and available at this time. A copy of the procurement request is attached to this request for ratification.

### VII. Compliance with other Agency Limitations – FAR 1.602-3(c) (7):

There are no known limitations that apply to this ratification that have not been found to be satisfied and addressed in this package.

### VIII. Steps to Prevent Future Unauthorized Commitments – EPAAR 1501.602-3(c)(1)(vi):

As a measure to prevent future occurrences, APPCD purchase card holders will be required to utilize one of two methods to register scientists for scientific conferences. The first method will be the use of a completed training form (SF182) with a PR noted on the document. In the absence of the SF182 the purchase card holder will be required to verify the presence of an

appropriate PR by contacting the funds certifying officer or accessing the Compass Data Warehouse system to verify an appropriate PR. This future process control should help prevent purchase card holders from registering scientists for conferences/meetings without a proper PR in place.

IX. Invoice Receipt and Reviews:

SETAC has submitted a receipt for payment to register Dr. Liu for the conference.

Attachments:

Purchase Requisition for registration to SETAC  
Receipt from SETAC for registration

cc: William Goins, JRO Acquisition, ORD/OPARM  
Chris Robbins, Actg. SRO, ORD



United States  
Environmental Protection Agency  
Washington, DC 20460

PROMBAS-AJBQ9J

PROCUREMENT REQUEST/ORDER

25(a) Custodial Area		1 Name of Originator Mark Barnes		2 Date of Requirement 02/06/2017									
25(b) Local Tracking / Miscellaneous		3 Mail Code	4 Telephone Number (919) 541-2343		5 Date Item Required								
6 Signature of Originator  CN=Mark Barnes/OU=RTP/O=USEPA/C=US			7 Recommended Procurement Method <input type="checkbox"/> Competitive <input type="checkbox"/> Other than full and open competition <input type="checkbox"/> Sole source small purchase										
8 Deliver To (Project Officer) Mark Barnes		9 Address		10 Mail Code	11 Telephone Number (919) 541-2343								
12 Suggested Source (Name, Address, ZIP Code, Phone/Contact) Name SETAC North America Through Bluepay.com Address City State Zip Phone Contact			13 Amount of money committed is <input type="checkbox"/> Increase <input type="checkbox"/> Decrease <input checked="" type="checkbox"/> Original <input type="checkbox"/> Cancellation		14 For Small Purchases Only Contracting Office is authorized to exceed the amount shown in Block 26 by 10% or 100, whichever is less <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No								
15 Approvals													
a. Branch/Office		Date		d. Property Management Officer/Designee									
b. Division/Office		Date		e. Other (Specify)									
c. Funds listed in Block 26 and Block 14 (if any) are available and reserved. (Signature and phone number of Certifying Officer)		Date		f. Other (Specify)									
16 Date of Order		17 Order Number		18 Contract Number (if any)									
20 FOB Point		21 Delivery of FOB Point by ON or before (Date)		22 Person Taking Order/ Quote and Phone Number									
23 Contractor (Name, Address, Zip Code)			24 Type of Order <input type="checkbox"/> a. Purchase Reference your Quote (See block 22) Please furnish the above on the terms specified on both sides of this order and on the attached sheets, if any, including delivery as indicated. <input type="checkbox"/> b. Delivery provisions on the reverse are deleted. The delivery order is subject to the terms and conditions of the contract. (See Block 19) <input type="checkbox"/> Oral <input type="checkbox"/> Written <input type="checkbox"/> Confirming										
25. Schedule													
Item Number (a)	Supplies or Services (b)	Quantity Ordered (c)	Unit (d)	Estimated Unit Price (e)	Unit Price (f)	Amount (g)	Quantity Accepted (h)						
1	Conference Registration	1	Each	\$920.00		920.00							
						Total \$	920.00						
26. Financial And Accounting Data													
DCN (Max 7)		Budget/FYs (Max 4)		Appropriation Code (Max 6)		Budget Org/Code (Max 7)		Program Element (Max 9)		Object Class (Max 4)		SFO	
1													
2													
3													
Amount (Dollars)		(Cents)		Site/Project (Max 8)		Cost Org/Code (Max 7)							
1													
2													
3													
27 United States of America By (Signature)								28 Typed Name and Phone of Contracting Officer				Phone	





United States  
Environmental Protection Agency  
Washington, DC 20460

PROCUREMENT REQUEST/ORDER

26. Financial And Accounting Data

	DCN (Max 7)	Budget/ FYs (Max 4)	Appropriation Code (Max 6)	Budget Org/ Code (Max 7)	Program Element (Max 9)	Object Class (Max 4)	Amount	Site/ Project (Max 8)	Cost Org/ Code (Max 7)
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29. Additional Information

29 (a) Custodial Area

29 (b) Local Tracking / Miscellaneous

**PROCUREMENT REQUEST/ORDER**

## 26. Schedule

Item Number (a)	Supplies or Services (b)	Quantity Ordered (c)	Unit (d)	Estimated Unit Price (e)	Unit Price (f)	Amount (g)	Quantity Accepted (h)
					Total \$	970.00	

Total \$	920 00
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**Dean, Timothy**

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**From:** Dean, Timothy  
**Sent:** Wednesday, January 11, 2017 9:13 AM  
**To:** Dean, Timothy  
**Subject:** FW: Your Receipt from SETAC North America

-----Original Message-----

**From:** BluePay [mailto:bluepay@bluepay.com]  
**Sent:** Tuesday, October 18, 2016 2:23 PM  
**To:** Barnes, Mark <Barnes.Mark@epa.gov>  
**Subject:** Your Receipt from SETAC North America

Thank you for your Approved transaction with SETAC North America

Transaction Type: SALE  
Status: Approved  
Amount: 920.00  
Account Holder: Mark Barnes  
Billing Address: 109 T.W. Alexander Drive , Research Triangle Park, North Carolina 27711  
Phone:  
Email: Barnes.mark@epa.gov  
Account: xxxxxxxxxxx3302  
Account Type: VISA  
Transaction ID: 100370059553  
AVS/CVV2: Y/M  
Comments: Online Store Order

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Powered by BluePay  
[www.bluepay.com](http://www.bluepay.com)

## **Determination and Findings**

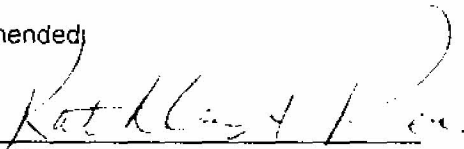
### **Ratification of an Unauthorized Commitment for a Registration Fee for the 2016 Society of Environmental Toxicology and Chemistry (SETAC) World Congress Conference**

In accordance with EPAAR 1501 602-3, Ratification of Unauthorized Commitments, I recommend the subject unauthorized commitment be ratified based on the following findings.

- (1) An EPA employee, Dr. Xiaoyu Liu was approved by ORD/NRMRL Management to attend a conference provided by the Society of Environmental Toxicology and Chemistry (SETAC) World Congress held from 11/06/16 through 11/10/16 in Orlando, FL. Dr. Liu traveled to and attended the entire conference where she presented her research on testing protocols for evaluating and estimating exposure to chemicals from common products and indoor environments. To pay the conference registration fee, Dr. Liu sought assistance from ORD/NRMRL purchase card holder, Mark Barnes. Mr. Barnes erroneously relied on Dr. Liu's travel authorization (TA) document, and associated accounting classification code, as the authority to pay for the registration fee using his Government purchase card rather than an approved SF182 training form.
- (2) This conference and associated fee of \$920 was deemed appropriate and reasonable in order to share the attendee's research results with members of SETAC and to gather the latest information in the field to inform future research.
- (3) This event was a unique, one-time training conference available from a single source. The fee of \$920 is comparable to similar professional conferences of the same duration. The amount is under the micro-purchase limit of \$3,500; therefore, competition was neither required nor sought. Based on the above, the fee is determined to be reasonable.
- (4) Attached are all relevant documents and records in support of this ratification, including a statement of circumstances surrounding the unauthorized commitment from ORD/NRMRL, an approved purchase request (PR) in the amount of \$920, and the receipt from SETAC North America in the amount of \$920.
- (5) There is no indication of intent by the individual(s) to knowingly place an unauthorized commitment, but rather a lack of knowledge and understanding of the appropriate procedure.
- (6) To prevent a reoccurrence of a similar, future unauthorized commitment, purchase card holders will be required to verify that an appropriate PR is available by: relying on a completed training form SF 182, verifying a proper PR through the funds certifying officer, and/or by accessing the PR via the Compass Data Warehouse system. Mr. Barnes was informed that only pre-authorized, committed conference-related costs may be charged to the Government purchase card as payment for conference registration fees.
- (7) Funding for this action was budgeted for and is available. A Procurement Request/Order, EPA Form 1900-8, will be generated by the FCO for submission to the Training Officer to pay the vendor.

Based on the above, ratification of the unauthorized commitment is recommended.

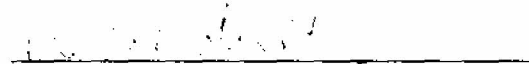
Recommended:



**MAR 23 2017**

Kathleen Roe  
Contracting Officer and Service Center Manager, OAM/CPOD/OOOO

Approve



**MAR 23 2017**

Lisa Stultz  
Chief of the Contracting Office (CCO)  
Acting Division Director, CPOD

**DETERMINATION & FINDINGS**  
**Unauthorized Commitment Ratification**  
**Purchase Order 68HERC19P0017**

In accordance with FAR 1.602-3(b)(2) ratification of an unauthorized commitment is recommended. The limitations of FAR 1.602-3(c)(1)-(7) have been met.

- (1) An invoice was submitted by the contractor. The Program Office does not dispute that these services were provided and accepted by the Government on May 30, 2018.
- (2) Cincinnati Acquisition Division Director, Lisa Stultz, meets the Agency requirements set forth in EPAAR 1501.602-3(b)(1) and (2) and 1502.100 to be the ratifying official.
- (3) The acquisition of these services would have been proper if a purchase order had been issued at the time the services were rendered. During this time, EAS was down for an extended period to update the contract numbering system.
- (4) The Contracting Officer determines that the price is fair and reasonable. The price of the cryogen refill is the standard price that EPA pays for the refill service
- (5) The Contracting Officer recommends payment. Agency procedures do not require concurrence of legal counsel.
- (6) Funds are available to pay for the unauthorized commitment and were available at the time of the unauthorized commitment. The exact amount of the invoice was retained for payment purposes.
- (7) Finally, the ratification is in accordance with other limitations set forth in the EPAAR and EPAAG, specifically Chapter 1 Subsection 1.6.2.

In accordance with EPAAR 1501.602-3(c)(i) – (vi), Procedures,

- (i) The Program Office has notified the Cognizant contracting office by memorandum dated October 2, 2018 of the circumstances surrounding the unauthorized commitment. The Contracting Officer became aware of the situation in July of 2018 when Bruker Biospin requested purchase order 68HE0C18P0034 be back dated so they could receive payment for a helium refill that took place on May 30, 2018. Bruker Biospin had been directed to perform the service by a Pegasus Technical Services' employee at the direction of Amy Zhao. Amy Zhao interpreted the request for additional funding for the purchase order to mean the purchase order was issued. The Contracting Officer had advised Amy Zhao that the purchase order would be issued when the EAS system was available for new awards.
- (ii) The Program Office needed the helium refill to be made on or before May 31 or the nuclear magnetic resonance spectrometer could quench, resulting in repair and restart costs of \$40,000.00. EPA did receive benefit of the services.
- (iii) The services associated with the unauthorized commitment were delivered and accepted were performed on May 30, 2018.
- (iv) The original purchase order was not competed. Bruker Biospin is the only source with the capability to refill the nuclear magnetic resonance spectrometer with helium due to the

specialized nature of the equipment. The instrument was built in accordance with EPA specifications by Bruker Biospin. Bruker utilizes their own technicians skilled to bring the instrument back to full functionality. The effort associated with this unauthorized commitment falls under the order's scope, but not in the order's period. The dollar value that must be ratified is less than the micro purchase threshold, so competition is not required.

(v) Given the dollar value of the ratification (\$3,970.00), competition is not required in accordance with FAR 13.202(a)(2).

(vi) As set forth in its memorandum the Program Office has taken the following steps to prevent a reoccurrence of additional unauthorized commitments:

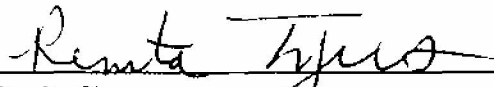
- Amy Zhao will be counselled to inform her Supervisor immediately of any similar occurrence to ensure appropriate actions are taken to address the matter.
- Amy Zhao, a currently certified COR, will receive EPA COR refresher training focusing on the roles and responsibilities of the COR. She will be suspended from performing COR efforts until the training is completed.
- An Office of Administrative and Research Support, Extramural Management Division, Extramural Management Specialist will provide mandatory training to the Division before the end of the calendar year on unauthorized commitments.
- The Division will establish a process to ensure the NMR helium levels are routinely checked and helium refills are ordered in a timely manner under the awarded PO. The Division will also formalize a plan to initiate an emergency procurement action if a refill is required but a PO is not formally in place.
- The Division will make every effort to start the ordering process suitably prior to the purchase order expiration to ensure the purchase order is issued before the period of performance. When feasible, option periods will be included on the initial base purchase to eliminate the need for future ratifications.
- In August 2018, the EPA CO for PFSI reviewed the Management Control Plan, and reiterated the following relevant contract clauses to the contractor and their responsibilities role: EPAAR 1552.237-71 Technical Direction and EPAAR 1552.237-76 Government-Contractor Relations as well as discussed EPA Order 1900.1A Interacting with Contractors with them. Additionally, they are planning a physical site visit along with informal interviews with both the Contract Lead-COR and **Pegasus Technical Services, Inc.** and will document the contract file with their results.

In accordance with EPAAR 1501.602-3(c)(2), the Division Director (or equivalent) is required to approve the memorandum documenting the circumstances of the unauthorized commitment. The Deputy Director for Management, NRMRL, IO has approved the memorandum. It is the determination of the Contracting Office that this signature level meets the equivalent standard.

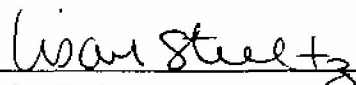
Finally, consistent with policy provided in Chapter 1. Section 1.6.2(b) of the EPAAG, the unauthorized commitment, as stated in the Ratification Request, was not intentional and this is not a repeat violation by the same individual.

Based upon the above and the memorandum provided by the Program Office, it is recommended that this unauthorized commitment be ratified in full.

Recommended:

  
\_\_\_\_\_  
Renita Tyus,  
Contracting Officer

Ratification Approved:

  
\_\_\_\_\_  
Lisa Stultz  
Chief of the Contracting Office  
Cincinnati Acquisition Division



<b>SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS</b> <small>OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, &amp; 30</small>				1. REQUISITION NUMBER PR-ORD-19-00262		PAGE OF 1 2	
2. CONTRACT NO.		3. AWARD/ EFFECTIVE DATE	4. ORDER NUMBER 68HERC19P0017		5. SOLICITATION NUMBER		6. SOLICITATION ISSUE DATE
7. <b>FOR SOLICITATION INFORMATION CALL:</b>		a. NAME Renita Tyus		b. TELEPHONE NUMBER (No collect calls) 513-487-2094		8. OFFER DUE DATE/LOCAL TIME	
9. ISSUED BY  CPOD US Environmental Protection Agency 26 West Martin Luther King Drive Mail Code: W136 Cincinnati OH 45268-0001		CODE CPOD		10. THIS ACQUISITION IS <input checked="" type="checkbox"/> UNRESTRICTED OR <input type="checkbox"/> SET ASIDE: % FOR:  <input type="checkbox"/> SMALL BUSINESS <input type="checkbox"/> HUBZONE SMALL BUSINESS <input type="checkbox"/> SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS <input type="checkbox"/> WOMEN-OWNED SMALL BUSINESS (WOSB) ELIGIBLE UNDER THE WOMEN-OWNED SMALL BUSINESS PROGRAM <input type="checkbox"/> EDWOSB <input type="checkbox"/> 8(A) NAICS: 811219 SIZE STANDARD: \$20.5			
11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED <input checked="" type="checkbox"/> SEE SCHEDULE		12. DISCOUNT TERMS		13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)		13b. RATING	
15. DELIVER TO NRML CINCINNATI US Environmental Protection Agency National Risk Mgmt Research Lab 26 West Martin Luther King Drive Cincinnati OH 45268		CODE NRML CINCINNATI		16. ADMINISTERED BY CPOD US Environmental Protection Agency 26 West Martin Luther King Drive Mail Code: NWD Cincinnati OH 45268		CODE CPOD	
17a. CONTRACTOR/ OFFEROR  BRUKER BIOSPIN CORPORATION Attn: Kate Muniz 15 FORTUNE DR BILLERICA MA 018213923		CODE 053454575 FACILITY CODE		18a. PAYMENT WILL BE MADE BY RTP Finance Center US Environmental Protection Agency RTP-Finance Center (AA216-01) 109 TW Alexander Drive www2.epa.gov/financial/contracts Durham NC 27711		CODE RTP FMC	
TELEPHONE NO. 9786679580		(b)(4)		18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a UNLESS BLOCK BELOW IS CHECKED <input type="checkbox"/> SEE ADDENDUM			
<input type="checkbox"/> 17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER							
19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES			21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT
0001	DUNS Number: 053454575 Invoice Approver: Amy Zhao Alt Invoice App: Michael Gonzales Delivery: 05/30/2018  Request the government to pay the charges for helium refill services for the Nuclear Magnetic Resonance spectrometer (NMR) incurred on May 30, 2018 by Bruker Biospin Corporation.  Ratification for unauthorized commitment (Use Reverse and/or Attach Additional Sheets as Necessary)						3,970.00
25. ACCOUNTING AND APPROPRIATION DATA See Schedule						26. TOTAL AWARD AMOUNT (For Govt. Use Only) \$3,970.00	
<input type="checkbox"/> 27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1, 52.212-4, FAR 52.212-3 AND 52.212-5 ARE ATTACHED. ADDENDA <input type="checkbox"/> 27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4, FAR 52.212-5 IS ATTACHED. ADDENDA <input type="checkbox"/> 28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN COPIES TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED.				<input type="checkbox"/> 29. AWARD OF CONTRACT: _____ OFFER DATED _____. YOUR OFFER ON SOLICITATION (BLOCK 5), INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMS: _____			
30a. SIGNATURE OF OFFEROR/CONTRACTOR				31a. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER)  Renita Tyus ELECTRONIC SIGNATURE			
30b. NAME AND TITLE OF SIGNER (Type or print)		30c. DATE SIGNED		31b. NAME OF CONTRACTING OFFICER (Type or print)		31c. DATE SIGNED	
				Renita A. Tyus		02/11/2019	

19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES	21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT
	Accounting Info: 18-19-C-26CL000-000FK8XPW-2588-26A5C-1926CLE005-00 1 BFY: 18 EFY: 19 Fund: C Budget Org: 26CL000 Program (PRC): 000FK8XPW Budget (BOC): 2588 Cost: 26A5C DCN - Line ID: 1926CLE005-001 Funding Flag: Complete Funded: \$3,970.00				

32a. QUANTITY IN COLUMN 21 HAS BEEN

☐ RECEIVED    ☐ INSPECTED    ☐ ACCEPTED, AND CONFORMS TO THE CONTRACT, EXCEPT AS NOTED: \_\_\_\_\_

32b. SIGNATURE OF AUTHORIZED GOVERNMENT REPRESENTATIVE		32c. DATE	32d. PRINTED NAME AND TITLE OF AUTHORIZED GOVERNMENT REPRESENTATIVE	
32e. MAILING ADDRESS OF AUTHORIZED GOVERNMENT REPRESENTATIVE			32f. TELEPHONE NUMBER OF AUTHORIZED GOVERNMENT REPRESENTATIVE	
			32g. E-MAIL OF AUTHORIZED GOVERNMENT REPRESENTATIVE	
33. SHIP NUMBER	34. VOUCHER NUMBER	35. AMOUNT VERIFIED CORRECT FOR	36. PAYMENT <input type="checkbox"/> COMPLETE <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL	37. CHECK NUMBER
<input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL				
38. S/R ACCOUNT NUMBER	39. S/R VOUCHER NUMBER	40. PAID BY		
41a. I CERTIFY THIS ACCOUNT IS CORRECT AND PROPER FOR PAYMENT		42a. RECEIVED BY (Print)		
41b. SIGNATURE AND TITLE OF CERTIFYING OFFICER		41c. DATE		42b. RECEIVED AT (Location)
				42c. DATE RECD (YY/MM/DD)

**DETERMINATION & FINDINGS**  
**Micro Purchase for Repairs and Calibration with Terms and Conditions**

In accordance with FAR 1.602-3(b)(2) ratification of an unauthorized commitment is recommended. The limitations of FAR 1.602-3(c)(1)-(7) have been met.

- (1) The payment receipt included with the Program Office's memorandum document the services that were provided by the contractor. The Program Office does not dispute that these services were provided.
- (2) Acting CAD Director, Noelle Mills, meets the Agency requirements set forth in EPAAR 1501.602-3(b)(1) and (2) to be the ratifying official.
- (3) The acquisition of these repair and calibration services were performed with funding at the micro purchase level by Max Miller, Engineer, Testing and Advanced Technology Division.
- (4) The contracting officer after reviewing the payment submitted under this unauthorized commitment determines that the price is fair and reasonable. The price is similar to those previously paid under contracts when items were provided in accordance with the contract.
- (5) The contracting officer does recommend ratification based on a corrective action plan that does address the core issues with appropriate training for the employee, the division, managers, and Approving Officials (AO) within TATD, as discussed later in this D & F. Agency procedures do not require concurrence of legal counsel.
- (6) Funds were approved and committed to pay for the unauthorized commitment with terms and conditions before the service was received. The Program Office knowingly provided \$2,200.00 in FY18/19 funds to Max Miller for services with Terms and Conditions, See Attached 1900-8 PR package.
- (7) Finally, the ratification is in accordance with other limitations set forth in the EPAAR 1501.602-3 and EPAAG (Environmental Protection Agency Acquisition Guide) Chapter 1 Subsection 1.6.2

In accordance with EPAAR 1501.602-3(c)(i) – (vi), Procedures,

- (i) The program office has notified the cognizant contracting office by memorandum dated February 08, 2019 of the circumstances surrounding the unauthorized commitment. Below is a time line of events up to receiving the memo.
  - a. December 17<sup>th</sup> and 18<sup>th</sup>, Max Millers purchase card was declined when attempting to make payment for the repair and calibration services, due to MCC.
  - b. December 19<sup>th</sup>, Max Miller reached out to the national purchase card team request the MCC be lifted. At this time, Diane Lyles notified Max that the Terms and Conditions prevent the purchase from being done and must be completed by a

contracting officer. Max then expressed that he was under the impression it was okay because he had not actually signed or agreed to the terms and conditions, not realizing that making payment would constitute as agreeance to the terms and conditions presented with the quote/invoice, as explained by Dianne (see FW\_Purchase Card Declined due to MCC.pdf).

- c. December 20<sup>th</sup>, Max received response from Fluke that the terms and conditions could not be removed from the purchase. Further, Fluke requested a PO be issued so payment could be rendered. (Fluke Email requesting PO and my request to remove Terms.pdf)
- d. December 31, 2018 to January 28, 2019, no action was taken during this time due to the Government shutdown.
- e. January 29, 2019, Erica Watkins notified Max Miller, Matt Brusstar, Bruce Kolowich, Cay Yanca, and the local purchase card team that myself, Angel Taylor, CO/SACO would conduct the Determination and Findings. (Ratification Email Chain.pdf)
- f. On February 8, 2019, Matt Brusstar issued a Memorandum for the unauthorized purchase. (Improper-procurement-Fluke-v1.docx)

(ii) TATD program office has been working on finalizing an SOP for purchase card purchases, providing more thorough guidance and process for making purchases with the government wide purchase card. On February 12, 2019, Matt Brusstar distributed the working SOP to SACO and the local purchase card team for comments. (RE: Modified SOP for distribution to staff) (Rev TATD Micro-Purchase Origination Process SOP\_2.12.19\_AMT review (002).docx)

- a. TATD Division management discussed with the Purchase Card Holder (PCH), the supervising Center Director, and Funds Certifying Official (FCO) the purchase violation and the lack of oversight.
- b. Staff admitted with being familiar with the restrictions outlaid in the EPAAG regarding terms and conditions yet misinterpreted the policy on how the terms and conditions are accepted when making a purchases and did not realize that making the purchase constitutes as agreement.
- c. To prevent further incidents, TATD has identified the following preventative measures:
  - i. Developing a more streamlined procedure in TATD for routing restricted and/or prohibited purchase card transactions through the local procurement office.
  - ii. Retraining all TATD management and staff on restricted and prohibited Governmentwide purchase card transactions.
  - iii. Reaffirm the use of alternative procurement options to avoid restrictions, including federal supply schedules or blanket purchase agreements.

- iv. Standard Operating Procedures (SOP) for TATD Micro-Purchases.
- v. Work closely with OAR NVFEL SACO to determine the proper procurement method for grey area micro-purchases.

(iii) Necessity of the Work and Benefit Derived by the Government:

- a. The procurement of repair and calibration services from Fluke, Inc. is for an electronic instrument used for calibrating temperature measurement devices. Temperature measurement is a critical part of the EPA lab's vehicle and engine testing under 40 CFR Part 1065 and 1066. The electronic Dual Block Drywell instrument is essential for calibrating temperature probes prior to being put into service in the laboratory test operations.
- b. The Dual Block Drywell device was shipped by Fluke to the lab, but it has been neither logged as received nor returned to Fluke by the lab, until the matter of payment can be resolved.
- c. The transaction is below micropurchase threshold and therefore no alternative sources were considered in the market research. Furthermore, as the manufacturer of the Dual Block Drywell device used by the EPA lab, Fluke is the only source qualified to perform repairs and calibration.
- d. Pricing has been found to be fair and reasonable by Contracting Officer, Angel Taylor, for this repair and calibration in comparison to similar repairs and calibration of laboratory equipment.

In accordance with EPAAR 1501.602-3(c)(2), TATD Associate Division Director, Matt Brusstar, has approved the memorandum. Additional funds will be provided to the contracting office for issuance of a Purchase Order (PO), pending the final decision of ratifying official.

Finally, consistent with policy provided in EPAAG Subsection 1.6.2, Ratification of Unauthorized Commitments, as stated in the Ratification Request Memorandum, was not intentional and this is not a repeat violation by the same individual.

Based upon the above and the memorandum provided by the Program Office, it is recommended that this unauthorized commitment be ratified in full.

Recommended:

**ANGEL  
TAYLOR**

Digitally signed by  
ANGEL TAYLOR  
Date: 2019.03.07  
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Angel M. Taylor, Contract Officer  
OAR NVFEL SACO

Ratification Approved:

**NOELLE  
MILLS**

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NOELLE MILLS  
Date: 2019.03.07  
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Noelle Mills, Acting Director  
Cincinnati Acquisition Division (CAD)